Supreme Court, U.S.
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ALEXANDER L. STEVAS
CLERK

No. 84-822

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, A NATIONAL BANKING ASSOCIATION, WALTER E. HELLER INTERNATIONAL CORPORATION AND RONALD J. GRAYHECK,

Petitioners,

v.

HAROCO, INC., A CORPORATION, ROMAN CERAMICS, INC., A CORPORATION, CALIFORNIA ORIGINALS, INC., A CORPORATION, AND MIKE WAYNE DISTILLED PRODUCTS CO., A CORPORATION,

Respondents.

OBJECTION TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF BY JOHN GRADO

Donald E. Egan
Michael Wm. Zavis
Francis X. Gressel, Jr.
Lee Ann Watson
Charles E. Ex
Katten, Muchin, Zavis,
Pearl & Galler
55 East Monroe Street
Chicago, Illinois 60603
312/346-7400
Attorneys for Petitioners

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Pursuant to Supreme Court Rule 36.3 Petitioners hereby object to the Motion For Leave To File Amicus Curiae Brief by John Grado, on behalf of himself and Technographics, Inc. for the following reasons:

1. The interest of movant John Grado as disclosed in his motion is simply that of an individual litigant who has a civil RICO action pending in which he hopes to recover treble damages. Furthermore, the movant fails to disclose in his motion that his action was appealed pursuant to

28 U.S.C. §1292(b), to the United States Court of Appeals for the First Circuit, *Grado v. Gross, et al.*, No. 84-1888, on the same issue that is presented in this case. However, after oral argument was heard and after certiorari was granted in this case and in *Sedima, S.P.R.L. v. Imrex Company, Inc., et al.*, No. 84-648, the First Circuit dismissed the appeal since this Court's resolution of the issue will be dispositive. A copy of the First Circuit's Order is reprinted in the attached Appendix.

2. Movant's interest is therefore no different than that of every other civil RICO plaintiff with a pending action and he has suggested no reason why Respondents in this case cannot adequately represent his interest. In addition, amicus curiae briefs in support of Respondents' position have been filed on behalf of: (1) the States of Arizona, Alaska, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming; (2) the Cities of Chicago, New York and Philadelphia; and (3) County of Suffolk, New York.

3. Unlike the amicus curiae brief filed by the American Bankers Association in support of Petitioners, the movant's sole interest is his individual stake in his pending RICO suit. In contrast, the American Bankers Association is the largest national trade association of the commercial banking industry in the United States, representing banks which are both plaintiffs and defendants in civil RICO actions.

4. The Brief which movant seeks to file raises arguments not pressed by Petitioners or Respondents and as such are not appropriate for consideration nor should Petitioners be required to respond thereto especially in light of the other amici briefs which have been filed in this action. *See, e.g., Monsanto Co. v. Spray-Rite Service Corp.*, ____ U.S. ____, 104 S.Ct. 1464, 1469-70 n.7 (1984); *Knetsch v. United States*, 364 U.S. 361, 370 (1960).

WHEREFORE, Petitioners respectfully submit that the Motion For Leave To File Amicus Curiae Brief by John Grado should be denied.

Donald E. Egan
Michael Wm. Zavis
Francis X. Grossi, Jr.
Lee Ann Watson
Charles E. Ex
Katten, Muchin, Zavis,
Pearl & Galler
55 East Monroe Street
Chicago, Illinois 60603
(312) 346-7400
Attorneys for Petitioners

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 84-1888

JOHN GRADO, on behalf of himself and Technographics, Inc.,
Respondent, Appellee,

v.

HENRY GROSS, MAHIR A. REISS, DAVID ALLEN, GARDNER, REALEX CAPITAL ASSOCIATES, L.P., AND THE REALEX CAPITAL CORPORATION,
Petitioners, Appellants,

and

TECHNOGRAPHICS, INC.,
Nominal Defendant, Appellee.

ORDER OF COURT

Entered: March 22, 1985

In accordance with this court's opinion filed this day.

It is ordered that this Court's order of October 22, 1984 partially granting petitioner's request for permission to appeal pursuant to 28 U.S.C. § 1292 (b) is vacated.

No costs.

By the Court:

/s/ Francis P. Scigliano
Clerk.

[Cert. cc: Clerk, U.S.D.C. of Massachusetts]

Not For Publication

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 84-1888

JOHN GRADO, ON BEHALF OF HIMSELF
and TECHNOGRAPHICS, INC.,

Respondent, Appellee,

v.

HENRY GROSS, MAHIR A. REISS, DAVID ALLEN,
GARDNER, REALEX CAPITAL ASSOCIATES, L.P., and
THE REALEX CAPITAL CORPORATION,

Petitioners, Appellants,

and

TECHNOGRAPHICS, INC.,

Nominal Defendant, Appellee.

Appeal from the United States District Court
for the District of Massachusetts
[Hon. A. David Mazzone, *U.S. District Judge*]

Before

Torruella, Aldrich, *Circuit Judges,*
and Selya,* *District Judge.*

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* Of the District of Rhode Island, sitting by designation.

John E. Beerbower with whom *Sheryl E. Reich, James E. Brandt, Richard M. Breslow* and *Cravath, Swaine & Moore* were on brief for appellants.

Allen C.B. Horsley with whom *Gene K. Landy, Christine M. Roach,* and *Widett, Slater & Goldman, P.C.* were on brief for appellee.

March 22, 1985

TORRUELLA, *Circuit Judge.* On October 22, 1984, we granted petitioner's request for an interlocutory appeal, pursuant to 28 U.S.C. § 1292(b), to review that portion of the district court's order relating to the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1691 *et seq.* Since that time, the Supreme Court has granted certiorari to review a case involving the very same issue that we were to consider. *Sedima, S.P.R.L. v. Imrex Co.*, 741 F.2d 482 (2d Cir. 1984), *cert. granted,* 105 S. Ct. 901 (1985). In view of this development, and that any decision by this court of the issue now before the Supreme Court might very well be unnecessary, we think it appropriate to revoke our grant of jurisdiction and to allow the case to continue below.

It is so ordered.